

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 38, "Administration," Chapter 41, "Determination of Taxable Income," Chapter 42, "Adjustments to Computed Tax," and Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Iowa Administrative Code.

These amendments are proposed as a result of 2008 Iowa Acts, House Files 2539 and 2700.

Item 1 adopts new rule 701—38.19(422) to provide for the indication of health care coverage for dependent children on individual income tax returns starting with the tax year beginning January 1, 2008.

Item 2 adopts new subrule 41.5(15) to provide that an itemized deduction for charitable contributions is not allowed for individual income tax for tax years beginning on or after January 1, 2008, for the amount of the contribution which is eligible for the charitable conservation contribution tax credit.

Item 3 amends rule 701—42.23(422) to update the listing regarding the sequence of tax credits to be deducted for individual income tax.

Item 4 adopts new rule 701—42.38(422) to provide for the charitable conservation contribution tax credit for individual income tax for tax years beginning on or after January 1, 2008.

Item 5 amends rule 701—52.12(422) to update the listing regarding the sequence of tax credits to be deducted for corporation income tax.

Item 6 adopts new rule 701—52.37(422) to provide for the charitable conservation contribution tax credit for corporation income tax for tax years beginning on or after January 1, 2008. This is similar to the change in Item 4.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 27, 2008, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 14, 2008. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 17, 2008.

These amendments are intended to implement 2008 Iowa Acts, House File 2539, section 4, and House File 2700, section 62, and Iowa Code Supplement section 422.33 as amended by 2008 Iowa Acts, House File 2700, section 63.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 701—38.19(422):

701—38.19(422) Indication of dependent child health care coverage on tax return. For tax years beginning on or after January 1, 2008, an individual who is an Iowa resident as of December 31 of the tax year who files an Iowa individual income tax return may report on the return the presence or absence of health care coverage for each dependent child as of December 31 of the tax year for which the exemption credit described in subrule 42.2(1), paragraph “c,” is claimed. It is not mandatory that a taxpayer indicate on the tax return the presence or absence of health care coverage for each dependent, and there is no penalty if this information is not provided on the tax return.

38.19(1) Definition of health care coverage. Health care coverage includes the following:

- a. Private health care coverage provided through an employer, a relative’s employer, or through a union.
- b. Private health care coverage purchased by an individual from a private company.
- c. Government health care coverage provided through the state Medicaid program set forth in Iowa Code chapter 249A, or the Hawk-I (Healthy and Well Kids in Iowa) program set forth in Iowa Code chapter 514I.
- d. Government health care coverage provided by the military including the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS) and the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).
- e. Government health care coverage provided by the United States Department of Health and Human Services to eligible American Indians under the Indian Health Service program.

38.19(2) Notification to the taxpayer. If the taxpayer indicates on the return that a dependent child does not have health care coverage and the taxpayer’s income reflected on the tax return is within the eligibility requirements for either the Medicaid program or the Hawk-I program, the department will send a letter to the taxpayer indicating that the dependent may be eligible for health care coverage under either the Medicaid or Hawk-I program. The letter will also enclose an application for health care coverage under either the Medicaid or Hawk-I program which can be completed and sent to the Iowa department of human services. The department of human services will make the final determination on whether the taxpayer is eligible under the Medicaid or Hawk-I program. A dependent child must be under the age of 21 to be eligible for the Medicaid program, and a dependent child must be under the age of 19 to be eligible for the Hawk-I program.

38.19(3) Reporting requirements. The department, in cooperation with the department of human services, must submit an annual report to the governor and the general assembly which will include the following:

- a. Number of Iowa families, by income level, who claim the personal exemption credit for dependent children described in subrule 42.2(1), paragraph “c.”
- b. The number of Iowa families, by income level, who claim the personal exemption credit who also indicated the presence or absence of health care coverage for their dependent children.
- c. The effect of these reporting and notification requirements on the number and percentage of children in Iowa who are uninsured.

This rule is intended to implement 2008 Iowa Acts, House File 2539, section 4.

ITEM 2. Adopt the following **new** subrule 41.5(15):

41.5(15) Charitable contributions relating to the charitable conservation contribution tax credit. For tax years beginning on or after January 1, 2008, a taxpayer who claims a charitable conservation contribution tax credit in accordance with rule 701—42.38(422) cannot claim an itemized deduction for charitable contributions for the amount of the contribution for which the tax credit is claimed. See 701—subrule 42.38(2) for examples illustrating how this subrule is applied.

ITEM 3. Amend rule 701—42.23(422) as follows:

701—42.23(422) Deduction of credits. The credits against computed tax set forth in Iowa Code sections 422.5, 422.8, 422.10 through 422.12C, and 422.110 shall be deducted in the following sequence:

1. Personal exemption credits.
2. Tuition and textbook credit.
3. Nonresident and part-year resident credit.
4. Franchise tax credit.
5. S corporation apportionment credit.
6. School tuition organization tax credit.
7. Venture capital credits.
8. Endow Iowa tax credit.
9. Agricultural assets transfer tax credit.
10. Film qualified expenditure tax credit.
11. Film investment tax credit.
12. Investment tax credit.
13. Wind energy production tax credit.
14. Renewable energy tax credit.
15. New jobs credit.
16. Economic development region revolving fund tax credit.
17. Charitable conservation contribution tax credit.
- ~~17.~~ 18. Alternative minimum tax credit.
- ~~18.~~ 19. Historic preservation and cultural and entertainment district tax credit (refundable portion).
- ~~19.~~ 20. Ethanol blended gasoline tax credit or ethanol promotion tax credit.
- ~~20.~~ 21. Research activities credit.
- ~~21.~~ 22. Assistive device credit.
- ~~22.~~ 23. Out-of-state tax credit.
- ~~23.~~ 24. Child and dependent care credit or early childhood development tax credit.
- ~~24.~~ 25. Motor fuel credit.
- ~~25.~~ 26. Claim of right credit (if elected in accordance with rule 701—38.18(422)).
- ~~26.~~ 27. Wage-benefits tax credit.
- ~~27.~~ 28. Soy-based cutting tool oil tax credit.
- ~~28.~~ 29. Refundable portion of investment tax credit, as provided in subrule 42.2(10), paragraph “b.”
- ~~29.~~ 30. E-85 gasoline promotion tax credit.
- ~~30.~~ 31. Biodiesel blended fuel tax credit.
- ~~31.~~ 32. Soy-based transformer fluid tax credit.
- ~~32.~~ 33. Earned income tax credit.
- ~~33.~~ 34. Estimated payments, payment with vouchers and withholding tax.

This rule is intended to implement Iowa Code sections 422.5, 422.8, 422.10, 422.11, 422.11A, 422.11B, 422.11C, 422.11D, 422.11E, 422.11F, 422.11G, 422.11H, 422.11I, 422.11J, 422.11K, 422.11L, 422.11M, 422.11O, 422.11P, 422.11R, 422.11S, 422.11T, 422.11U, 422.12, 422.12B, and 422.12C and 422.110 and 2007 Iowa Acts, House File 892, sections 5 and 6 and 2008 Iowa Acts, House File 2700, section 62.

ITEM 4. Adopt the following **new** rule 701—42.38(422):

701—42.38(422) Charitable conservation contribution tax credit. Effective for tax years beginning on or after January 1, 2008, a charitable conservation contribution tax credit is available for individual income tax which is equal to 50 percent of the fair market value of a qualified real property interest located in Iowa that is conveyed as an unconditional charitable donation in perpetuity by a taxpayer to a qualified organization exclusively for conservation purposes.

42.38(1) Definitions. The following definitions are applicable to this rule:

“*Conservation purpose*” means the same as defined in section 170(h)(4) of the Internal Revenue Code, with the exception that a conveyance of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits is not considered a conveyance for a conservation purpose.

“*Qualified organization*” means the same as defined in section 170(h)(3) of the Internal Revenue Code.

“*Qualified real property interest*” means the same as defined in section 170(h)(2) of the Internal Revenue Code. Conservation easements and bargain sales are examples of a qualified real property interest.

42.38(2) Computation of the credit. The credit equals 50 percent of the fair market value of the qualified real property interest. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a qualified real property interest, and these are equally applicable in determining the amount of the charitable conservation contribution tax credit.

The maximum amount of the tax credit is \$100,000. The amount of the contribution for which the tax credit is claimed shall not be claimed as an itemized deduction for charitable contributions for Iowa income tax purposes.

42.38(3) Claiming the tax credit. The tax credit is claimed on Form IA 148, Tax Credits Schedule. The taxpayer must attach a copy of federal Form 8283, Noncash Charitable Contributions, which reflects the calculation of the fair market value of the real property interest, to the Iowa return for the year in which the contribution is made. If a qualified appraisal of the property or other relevant information is required to be attached to federal Form 8283 for federal tax purposes, the appraisal and other relevant information must also be attached to the Iowa return.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following 20 years or until used, whichever is the earlier.

If the taxpayer claiming the credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual’s pro-rata share of the individual’s earnings of the partnership, limited liability company, S corporation, or estate or trust.

42.38(4) Examples. The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: A taxpayer conveys a real property interest with a fair market value of \$150,000 to a qualified organization during 2008. The tax credit is equal to \$75,000, or 50 percent of the \$150,000 fair market value of the real property. The taxpayer cannot claim the \$150,000 as an itemized deduction for charitable contributions on the Iowa individual income tax return for 2008.

EXAMPLE 2: A taxpayer conveys a real property interest with a fair market value of \$500,000 to a qualified organization during 2009. The tax credit is limited to \$100,000, which equates to \$200,000 of the contribution being eligible for the tax credit. The remaining amount of \$300,000 (\$500,000 less \$200,000) can be claimed as an itemized deduction for charitable contributions on the Iowa individual income tax return for 2009.

This rule is intended to implement 2008 Iowa Acts, House File 2700, section 62.

ITEM 5. Amend rule 701—52.12(422) as follows:

701—52.12(422) Deduction of credits. The credits against computed tax set forth in Iowa Code sections 422.33 and 422.110 shall be deducted in the following sequence.

1. Franchise tax credit.
2. Venture capital credits.
3. Endow Iowa tax credit.
4. Agricultural assets transfer tax credit.
5. Film qualified expenditure tax credit.
6. Film investment tax credit.
7. Investment tax credit.
8. Wind energy production tax credit.

9. Renewable energy tax credit.
10. New jobs credit.
11. Economic development region revolving fund tax credit.
12. Charitable conservation contribution tax credit.
- ~~12.~~ 13. Alternative minimum tax credit.
- ~~13.~~ 14. Historic preservation and cultural and entertainment district tax credit.
- ~~14.~~ 15. Corporate tax credit for certain sales tax paid by developer.
- ~~15.~~ 16. Ethanol blended gasoline tax credit or ethanol promotion tax credit.
- ~~16.~~ 17. Research activities credit.
- ~~17.~~ 18. Assistive device credit.
- ~~18.~~ 19. Motor fuel credit.
- ~~19.~~ 20. Wage-benefits tax credit.
- ~~20.~~ 21. Soy-based cutting tool oil tax credit.
- ~~21.~~ 22. Refundable portion of investment tax credit, as provided in subrule 52.10(4).
- ~~22.~~ 23. E-85 gasoline promotion tax credit.
- ~~23.~~ 24. Biodiesel blended fuel tax credit.
- ~~24.~~ 25. Soy-based transformer fluid tax credit.
- ~~25.~~ 26. Estimated tax and payments with vouchers.

This rule is intended to implement Iowa Code sections 15.333, 15.335, 422.33, 422.91 and 422.110.

ITEM 6. Adopt the following **new** rule 701—52.37(422):

701—52.37(422) Charitable conservation contribution tax credit. Effective for tax years beginning on or after January 1, 2008, a charitable conservation contribution tax credit is available for corporation income tax which is equal to 50 percent of the fair market value of a qualified real property interest located in Iowa that is conveyed as an unconditional charitable donation in perpetuity by a taxpayer to a qualified organization exclusively for conservation purposes.

52.37(1) Definitions. The following definitions are applicable to this rule:

“*Conservation purpose*” means the same as defined in Section 170(h)(4) of the Internal Revenue Code, with the exception that a conveyance of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits is not considered a conveyance for a conservation purpose.

“*Qualified organization*” means the same as defined in Section 170(h)(3) of the Internal Revenue Code.

“*Qualified real property interest*” means the same as defined in Section 170(h)(2) of the Internal Revenue Code. Conservation easements and bargain sales are examples of a qualified real property interest.

52.37(2) Computation of the credit. The credit equals 50 percent of the fair market value of the qualified real property interest. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a qualified real property interest, and these are equally applicable in determining the amount of the charitable conservation contribution tax credit.

The maximum amount of the tax credit is \$100,000. The amount of the contribution for which the tax credit is claimed shall not be claimed as a deduction for charitable contributions for Iowa income tax purposes.

52.37(3) Claiming the tax credit. The tax credit is claimed on Form IA 148, Tax Credits Schedule. The taxpayer must attach a copy of federal Form 8283, Noncash Charitable Contributions, which reflects the calculation of the fair market value of the real property interest, to the Iowa return for the year in which the contribution is made. If a qualified appraisal of the property or other relevant information is required to be attached to federal Form 8283 for federal tax purposes, the appraisal and other relevant information must also be attached to the Iowa return.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following 20 years or until used, whichever is the earlier. If the taxpayer claiming the credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income

taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

52.37(4) Examples. The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: A taxpayer conveys a real property interest with a fair market value of \$150,000 to a qualified organization during 2008. The tax credit is equal to \$75,000, or 50 percent of the \$150,000 fair market value of the real property. The taxpayer cannot claim the \$150,000 as a deduction for charitable contributions on the Iowa corporation income tax return for 2008.

EXAMPLE 2: A taxpayer conveys a real property interest with a fair market value of \$500,000 to a qualified organization during 2009. The tax credit is limited to \$100,000, which equates to \$200,000 of the contribution being eligible for the tax credit. The remaining amount of \$300,000 (\$500,000 less \$200,000) can be claimed as a deduction for charitable contributions on the Iowa corporation income tax return for 2009.

This rule is intended to implement Iowa Code Supplement section 422.33 as amended by 2008 Iowa Acts, House File 2700, section 63.